

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

**TH11a**

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Staff: SAM-SC  
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Hearing date: 08/08/02

## STAFF REPORT: REQUEST FOR RECONSIDERATION

**Application number** .....3-01-013-A1-R

**Applicant**.....Paul Baldacci

**Project location**.....1687 Sunset Drive in the Asilomar Dunes neighborhood of the City of Pacific Grove, (Monterey County) APN 007-041-028.

**Project description** .....Request for the reconsideration of the denial of an amendment to a Coastal Development Permit to raise the floor and roof level of the 1,126 sq. ft. garage portion of an approved house by 2.8 feet.

**Local approval**.....Architectural Review Board approval on 1/8/02 (AA#2600-99), Pacific Grove City Council approval 2/6/02.

**File documents**.....Permit File 3-01-013-A1 and Reconsideration Requests dated June 17, 2002 and July 11, 2002.

**Staff recommendation** ...Staff recommends that the Commission **deny** the request for reconsideration.

**PROCEDURAL NOTE:** The Commission's regulations provide that at any time within thirty days following a final Commission action on a permit, the applicant may ask the Commission to reconsider all or a portion of their action. (CCR, Title 14, Section 13109.2 ) The grounds for reconsideration are provided in Coastal Act Section 30627, which states in part: "The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence could not have been presented at the hearing on the matter or that an error of fact or law occurred which has the potential of altering the initial decision" (Public Resources Code, Section 30627 (b) (3)).

**EFFECT OF DENYING THE RECONSIDERATION:** If the Commission determines that grounds for reconsideration of the June 2002 action do not exist, the initial decision to deny the project stands.

### I. Summary

The Commission denied an amendment to a previously approved coastal development permit application to raise the floor and roof level of the 1,126 square foot garage portion of the approved home by 2.8 feet at its June 13, 2002 meeting in Long Beach. The primary basis for the denial was the project's potential



**California Coastal Commission**  
**August 2002 Meeting in San Luis Obispo**

Staff: Stephanie Matraw Approved by:

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for impacts on the area's significant visual resources, although the amendment request also raised questions regarding additional alternatives that might be pursued in lieu of raising the roof of the garage. In the reconsideration request, received on June 21, 2002 and filed on July 17, 2002, the applicant contends that the Commission's prior denial (3-01-013-A1) was based on unfair treatment, lack of staff preparation, that there is relevant new evidence that was not available at the hearing, and that errors of fact and law which affected the Commission's original decision occurred (see Exhibits A and B, letters requesting reconsideration). To summarize the contentions:

1. Commission staff did not allow the item to be moved to the consent calendar for the June meeting.
2. There is relevant new evidence, which, in the exercise of reasonable diligence, was not available at the hearing, because:
  - a) Staff neglected to bring all visual exhibits the applicant submitted to the hearing; and
  - b) Staff did not emphasize a support letter from a member of the public.
3. The applicant was not given adequate time for a rebuttal of the opposition's material.
4. Staff did not submit to the Commission all public comment on the project, specifically a letter written by the applicant, and a comment letter by a Pacific Grove City Council member.
5. The Commission based its determination on errors of fact and law.
  - a) Commission decision was based in part on the understanding that alternatives to the raised elevation are available;
  - b) The only issue raised by staff is conformance with Coastal Act visual policies;
  - c) Commission did not weigh competing interests of protection of visual resources and minimization of landform alteration; and
  - d) Commissioner Potter misstated staff's recommendation when calling for a vote and confused other Commissioners who had spoken in favor of the amendment.

Each of these contentions is discussed in detail in the Findings. Staff did not find merit to the claims of the existence of relevant new evidence, or errors in fact and law, and is recommending that the request for reconsideration be denied.

If the Commission determines that grounds for reconsideration of the June 2002 action do not exist, the initial decision to deny the project stands. If the Commission determines that grounds for reconsideration exist, the request should be approved and a new hearing on whether to approve an amendment to the previously approved coastal development permit for the project will be scheduled for a subsequent Commission meeting.



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## II. Staff's Recommendation

**MOTION: I move that the Commission grant reconsideration of Coastal Development Permit No. 3-00-082-R.**

**STAFF RECOMMENDATION TO DENY RECONSIDERATION:** Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

**RESOLUTION TO DENY RECONSIDERATION:** The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit number 3-01-013-A1-R on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.



### III. Findings and Declarations

#### A. Permit History and Background:

The applicant submitted an application for an amendment to a previously approved coastal development permit to construct a house in the Asilomar dunes neighborhood of Pacific Grove. The amendment request involved raising the floor and roof level of the garage portion of the approved house by 2.8 feet. The application was heard at the Commission's June 13, 2002 hearing in Long Beach. Although Staff had recommended approval, the Commission denied the application. The primary basis for the denial was that the proposed increase in height of the structure would have an adverse impact on visual resources in a scenic area that could be avoided through a design change not involving an increase in structure height (See *Revised Findings*, Agenda Item TH10a on August 8, 2002).

#### B. Request for Reconsideration

The Commission's Regulations provide that at any time within 30 days of the Commission's action on a permit, the Applicant may ask the Commission to reconsider all or a portion of its' action. (CCR Title 14, Section 13109.2) In order to file a request for reconsideration, the Applicant must submit a fee as required by CCR Title 14, Sections 13055(a)(11) or (12) and the public noticing materials described in Section 13109.5(a). The grounds for reconsideration are provided in Coastal Act Section 30627 which states in part:

*"The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence, could not have been presented at the hearing on the matter or that an error of fact or law occurred which has the potential of altering the initial decision."*

In this case, the applicant is contending that relevant new evidence that was not available at the hearing, despite reasonable diligence, and that various errors of fact and law were made that would, if corrected, have the potential to alter the Commission's action on this initial item. Each of these contentions, presented in six categories, is discussed in the following sections of these findings.

#### 1. Due Process Oversight

Applicant raises concerns about the Executive Director's decision to hear the amendment on the regular permit amendment calendar rather than the consent calendar. He cites language in the Commission's meeting notice that states:



*An amendment below may be moved to the Consent Calendar for this area by the Executive Director when, prior to taking up the Consent Calendar, Staff and the applicant are in agreement on the Staff recommendation.” (Exhibit A, p. 2)*

The applicant asserts that the Executive Director did not afford the applicant the opportunity to be moved to the Consent Calendar, and that this is a due process oversight to which the applicant was entitled (see Exhibit A, pp. 1-2).

**Analysis:** In deciding on which hearing agenda calendar to place the amendment request, Commission staff, including the Acting District Director for the Central Coast District, acted on behalf of the Executive Director and reviewed the Applicant’s request to be placed on the consent calendar. Article 15, Section 13100 of the California Code of Regulations provides the following guidance:

*Permit applications which, as submitted or as recommended to be conditioned, in the opinion of the executive director do not raise significant issues with respect to the purposes and objectives of the Coastal Act, **may** be scheduled for one public hearing during which all such items will be taken up as a single matter. This procedure shall be known as the Consent Calendar. (Emphasis added)*

This regulation is also reflected in generic language on the Commission’s agenda headings for Permit Amendments, which states:

*An Amendment below **may** be moved to the Consent Calendar . . . by the Executive Director when, prior to taking up the Consent Calendar, staff and the applicant are in agreement on the staff recommendation [emphasis added].*

Thus, removal of an item to the Consent Calendar is a clearly a discretionary decision; the Executive Director is not required to move items scheduled for the Regular Permit Amendment Calendar to the Consent Calendar. Concomitantly, there is no entitlement to have an item placed on the Consent Calendar.

In this case, given the nature of the amendment request, which proposed an increase in structure height in a sensitive visual area along the Pacific Grove shoreline, the Executive Director was within his discretion to keep the amendment item on the regular permit amendment calendar. As a consequence, no error of fact or law occurred. Thus, the request for reconsideration should not be granted based on this contention.

## 2. Relevant evidence not presented at hearing.

The Applicant makes various contentions concerning the evidence presented to the Commission. First, Applicant contends that the “Commission did not have an opportunity to consider relevant new evidence”. The applicant contends that Staff neglected to provide all the exhibits submitted by the applicant at the public hearing, and thus that the presentation was inadequate:



*Much of the relevant evidence was not made available to the Commission members, resulting in the Commission having inadequate and incorrect information before them when they voted on the Amendment application. (See Exhibit B, p.4 )*

Second, the applicant contends that he was misled by staff with respect to exhibits and that their exclusion from the public hearing undermined his presentation to the Commission.

*This lack of detailed displays of site circumstance, to and including a detailed topographical map of view shed analysis, defeated and undermined applicant's presentation to Commission. Staff had lead applicant to understand, that all exhibits, given by applicant, to Staff, would be present at Commission meeting; and it was not necessary for applicant to provide duplicates.(Exhibit A, p.2 )*

Third, the applicant contends that “staff was not prepared to make corresponding adequate presentation” (Exhibit A, p. 2).

Finally, the applicant also contends in two separate submittals that staff did not emphasize a letter of support from a member of the public (See Exhibit B. p. 3):

*... Staff should have emphasized the April 26, 2002 letter from Pacific Grove City Council member Morris Fisher supporting the height modification and action of the City Design Review Board.*

And:

*Most importantly, Staff did not include additional statement supplied by applicant to Staff, for inclusion in package sent to Commission members on the Amendment; or the Member of the Pacific Grove City Council, Morris G. Fisher's letter of April 26, 2002 outlining the extensive procedures, review and approvals supplied by Local controls to applicant application before it was forwarded on to Commission (see also, Exhibit A, p. 4).*

**Analysis:** There is no error in fact or law with respect to the various applicant claims concerning evidence presented to the Commission. First, while it is true that staff did not bring to the hearing every exhibit pertaining to this project that was submitted by the applicant, all exhibits submitted were thoroughly evaluated and analyzed, and were considered in the preparation of the staff's original recommendation of approval.

Second, the staff recommendation included adequate description of the proposed amendment, and analysis of the impact. In addition, the staff recommendation included exhibits depicting the project location, site plans, elevations, the original project conditions, photographs of the site, correspondence received on the proposed height change. Finally, along with an oral presentation of the amendment request, photographs of the site, including a photograph with an illustration of the proposed change in structure height, were presented at the public hearing by Commission staff (Exhibit D). In short, the



Commission was provided with adequate and substantial evidence upon which to base its decision, and no error in fact or law occurred (see *Revised Findings*, Agenda Item TH10a on August 8, 2002).

With respect to the “one of a kind scaled topographical map of view shed analysis,” the model to which the applicant refers was created for the original approval of the house, and does not illustrate the effect of the proposed amendment. Thus, even if it had been available at the Commission hearing, it would not have altered the decision. Thus, the request for reconsideration should not be granted based on this contention.

Staff also addressed the applicant’s question regarding the submission of exhibits by stating that all material submitted to staff would be reviewed, analyzed and considered during formation of the staff recommendation. Due to travel constraints and overall number of exhibits received for each application, staff did not agree to bring all exhibits to the public hearing as it is not customary to do so. With respect to the staff statement that the applicant need not provide duplicates, this statement was made regarding the submission of a letter in support of staff’s original recommendation of approval by the applicant, not the physical model of the site. Public comment received after staff reports are mailed is included in the District Director’s report, as was the case with the applicant’s comment letter. Staff therefore informed the applicant that sending duplicates to individual Commissioners was not necessary. Because all exhibits were analyzed, and this analysis presented in the staff report, there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, and thus the request for reconsideration should not be granted based on this contention.

Finally, Commission staff presents all public comment relevant to an application for Commissioner review pursuant to Section 13060 of the California Coastal Commission Regulations. With respect to the applicant’s claim that Morris G. Fisher’s letter was not submitted to the Commission, it was attached as Exhibit I, pp. 1-6 of the staff report dated 05/23/02.<sup>1</sup> The applicant also had the opportunity at the public hearing in June to emphasize any public comment letters received pertaining to his project, and did in fact mention Mr. Fisher’s letter. Additionally, staff is not required to emphasize one public comment letter over another. With respect to the applicant’s own statement concerning the amendment, dated June 4, 2002, it was received after staff reports had been mailed out to the public, and was thus included in the District Director’s report, on page 275, for the Commission’s consideration. The District Director’s report is submitted to the Commissioners the day before the hearing. In summary, this contention presents no error in fact or law, nor the existence of any relevant new evidence not presented at the original hearing, and thus, the request for reconsideration should not be granted based on this contention.

### 3. Insufficient Rebuttal Time

The applicant asserts that he was not allowed enough rebuttal time after the opposition’s presentation, and that he could not thoroughly examine the exhibits they presented. He also expresses concern that he was misled by staff concerning the nature of the issue raised by the amendment (See Exhibit A, p. 3).

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<sup>1</sup> As a point of clarification, Mr. Fisher’s letter was sent on April 26, 2002, but erroneously dated March 26, 2002.



**Analysis:** The applicant was given and used a full 12 minutes to make his initial presentation and two minutes to provide a rebuttal to the opposition's contentions, consistent with Section 13066(2), which states, "The chairperson may allow rebuttal testimony in accordance with Public Resources Code section 30333.1(a)" (Emphasis added). Thus, the Chairperson is not required to allow rebuttal. Page 2 of the Meeting Notice gives guidance to the public with respect to time limits, stating that they are indicated on the speaker sign-up forms. The Meeting Notice also states that the Chairman will determine the time limits for each speaker at the beginning of the public hearing. Mr. Baldacci took advantage of the entire time allotted to him, both to present his case and to rebut the opposition's contentions. He was not treated unfairly and was afforded an opportunity to rebut.

Staff did make Mr. Baldacci aware from the beginning of the amendment process that the main issue in the Sunset Drive area of the Asilomar Dunes neighborhood, with respect to the amendment, is one of impact to visual resources. The staff report that was sent to Mr. Baldacci focused on this very issue. The amendment request involved an additional visual imposition on a very sensitive scenic area. With respect to retaining wall design, as pointed out by the applicant, this alternative had been discussed at the local level and, as discussed below, was ultimately identified by the Commission as a more appropriate alternative that would avoid the visual impact of an increase in structure height.

In sum, the applicant was provided with rebuttal time, consistent with Section 13066(2) of the Commission's Regulations, and with respect to relevant Coastal Act issues he was not misled by staff. As a consequence, no error of fact or law occurred and no new relevant information has been presented. Thus, the request for reconsideration should not be granted based on this contention

#### 4. Alternatives Analysis

The applicant claims that the Commission's June 13, 2002 decision was based in part on an understanding that alternatives to the raised elevation are available, and that this is an error of fact (Exhibit B, p. 4).

**Analysis:** In considering whether to approved a specific development (in the case an increase in structure height), the Commission must consider the environmental impact and feasibility of various alternatives. As discussed in the Revised Findings for the amendment, he Commission's denial of the proposed amendment was based on the fact that raising the roof of the garage will have an impact on sensitive visual resources, coupled with the availability of a feasible alternative to address the applicant's concern (taller retaining wall). Contrary to applicant's assertion, the Commission was provided with alternative analysis in the staff report, and Exhibit I, p. 3 provide a copy of a memo from the City of Pacific Grove to Commission staff that specifically mentions the retaining wall option. Although the City determined that the increase in structural height was the preferred option to address the applicant's planning errors, the Commission, in exercising its coastal development permit authority, must make an independent determination concerning the impact of a proposed development, and the feasibility and environmental impacts of various alternatives. In this case, the Commission determined that the retaining wall option was a feasible alternative that would avoid the visual impact of the proposed increase in structure height (see *Revised Findings*, Agenda Item TH10a on August 8, 2002).



## 5. Competing Concerns of Coastal Act not Weighed

The applicant asserts that the Commission did not weigh the competing concerns viewshed protection and landform alteration as mandated by the Coastal Act; and that the Commission did not adequately consider the impacts of alternatives to landforms on the site (Exhibit B, p. 6). The applicant suggests that in not following the staff recommendation of approval, that the Commission made a clear error of fact and law.

**Analysis:** The Commission staff report of May 23, 2002, raised the issue of conformance of the project with Coastal Act Section 30251, which protects scenic and visual qualities of coastal areas. The Commission is not required to adopt a staff recommendation, and it must make an independent decision based on its assessment of the evidence presented. The Commission found that the proposed amendment would have adverse impacts on visual resources, and that a feasible alternative existed that was less environmentally damaging. The Commission was aware that the entire project involved substantial grading in a sensitive dune environment. There was also a retaining wall already included in the project design. Thus, the Commission necessarily balanced the additional grading impacts of a revised retaining wall (if any) with the visual impacts of the proposed increase in structure height when it made its decision. This claim does not present any basis for an error in fact or law, thus, the request for reconsideration should not be granted based on this contention.

## 6. Mis-statement of Staff Recommendation

The applicant contends that Commissioner Potter misstated staff's recommendation when calling for a vote and confused other Commissioners who had spoken in favor of the amendment (Exhibit B, p. 6).

**Analysis:** California Coastal Commission Regulations Section 13092(a) outlines the effect of vote under various conditions.

*Section 13092(a) "Votes by the commission shall only be on the affirmative question of whether the permit should be granted; i.e., a "yes" vote shall be to grant a permit and a "no" vote to deny..."*

A motion was made by Commissioner Potter and seconded by Commissioner Woolley at the June 13, 2002 hearing, in the affirmative, subject to Section 13092(a) of California Coastal Commission Regulations. Therefore, because the Commissioners made the motion in compliance with Section 13092(a) of the Coastal Commission Regulations, the applicant's contention presents no error of fact or law, and thus, the request for reconsideration should not be granted based on this contention.



## IV. Conclusion

Coastal Commission Regulation Section 13109.4 outlines the grounds for reconsideration as provided in Public Resources Code Section 30627 (See Exhibit Xx). This Section of the Coastal Act provides for a reconsideration based on either:

- 1: relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter; or
- 2: that an error of fact or law has occurred which has the potential of altering the initial decision.

The applicant has made numerous claims that his project was not fairly evaluated or presented; that relevant new evidence was not available at the hearing; and that errors of fact and law that affected the Commission's original decision occurred. The above analysis has discussed each of the applicant's claims. Overall, there is no merit to the claims of omission of relevant new evidence, or the existence of errors in fact or law. Thus, the request for reconsideration is denied

